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August 4, 2005

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: March 21, 2005

Case Number: TSO-0205

This Decision concerns the eligibility of XXXXXXXX XXXXXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

In this instance, the individual received a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on November 5, 2004, alleging that the individual "engaged in unusual conduct . . . which tends to show that [he] is not honest, reliable, or trustworthy, or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l) (Criterion L). The basis for this finding is summarized below.

The Notification Letter indicates that in December 2003, the individual and his wife filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code. The Notification Letter further states that on May 19, 2004, a Personnel Security Interview was conducted with the individual during which the individual provided information indicating that his wife had obtained and maxed out a number of cards, and that the individual had also engaged in spending beyond his means while failing to make timely payments on his home mortgage and state taxes.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on March 21, 2005, the individual exercised his right under Part 710 to request a hearing in this matter, 10 C.F.R. § 710.21(b), and on March 23, 2005, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called as its sole witness the Personnel Security Specialist who conducted the PSI with the individual. The individual testified on his own behalf and called no other witnesses. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual has been employed by a DOE contractor for nearly 20 years and was issued a DOE security clearance when he began his employment. The individual maintained his security clearance without incident until December 2003 when he

reported to his employer that he and his wife had made the decision to file a petition for Chapter 7 bankruptcy. This information was referred to DOE Security in an Incident Report. At the time the Incident Report was received, DOE Security was in the process of conducting the required five-year reinvestigation of the individual's suitability to hold a security clearance. In February 2004, the Federal Bureau of Investigation (FBI) provided an investigation report to DOE Security revealing that the individual and his wife had maxed out several credit cards, were in arrears on their mortgage payment and delinquent in paying their state taxes. A Personnel Security Interview (PSI) was therefore conducted with the individual on May 19, 2004, in an attempt to resolve these matters.

During the PSI, the individual stated that his financial difficulties began in March 2002 when his wife was fired from her job. The individual explained that his wife was a contract postal carrier for thirteen years but was accused of stealing new credit cards from her mail deliveries. Following an investigation into the matter, the individual's wife was handcuffed and escorted from the premises, and her contract was terminated. The individual claimed during the PSI that no formal charges were filed against his wife but stated later that the local prosecutor had offered a plea bargain agreement to his wife under which she would have to serve up to three years in jail. The individual maintained that the allegations of credit card theft were unsubstantiated.

The individual stated that he and his wife had been married for thirty years, and she had always been in charge of their finances. The individual stated that after his wife's termination in March 2002, he began to work as much overtime as possible to make up for the shortfall in income and he assumed that all of their bills were being paid. However, in early 2003, the individual received a letter from a finance company threatening to repossess his truck because payments were not being made. The individual also began to receive notices and phone calls from credit card companies threatening action for unpaid debts. According to the individual, it was only at this time in 2003 that he discovered that his wife had been spending excessively using as many as 18 to 22 credit cards that she acquired without his knowledge. Several of these cards were charged to the maximum limit. The individual also discovered that the wife was using credit cards to pay their bills, including their home mortgage. The individual stated that they had acquired a boat and big screen TV, although it was unclear whether these purchases occurred before or after his wife lost her job.

The individual attributed the large amount of credit card debt to his wife's lavish spending on their children, stating that she bought them whatever they wanted including cars and the fanciest clothes. The individual also suggested that his wife had a gambling problem. The individual stated that prior to the wife's termination, they would go to Las Vegas every six months and would take \$1000 apiece. The individual admitted that he had accumulated \$8000 in credit card debt on his two personal credit cards, MasterCard and Visa, attributable to these trips. The individual explained,

however, that while they stopped making these trips after his wife lost her job, his wife continued to gamble at local casinos on an average of twice a week, usually taking \$200 on each visit.

Later in 2003, the individual took \$21,000 out of his pension account, and sold their boat and some of their furniture, to help pay their burgeoning credit card debts. After a few months, however, the individual and his wife found that they still could not keep up with their bills and went to see a lawyer in November 2003. According to the individual, the lawyer advised them to file a Chapter 7 bankruptcy since their credit card debt, approximately \$80,000, was too excessive to justify filing a Chapter 13 (reorganization of debt) bankruptcy. The individual and his wife therefore filed a Chapter 7 bankruptcy on December 17, 2003. Their credit card debts were discharged in bankruptcy on March 29, 2004. Although all of their credit card debt was discharged, the individual and his wife retained and continued to make payments on their house and the individual's truck. They also kept a small car that had only a few payments remaining.

The individual further stated during the May 2004 PSI that subsequent to filing for bankruptcy, he and his wife began doing the bills together. However, the individual did not know whether his wife had filed their 2003 state tax return. The individual also stated that he believed they were current on their mortgage payments. The Personnel Security Specialist then informed the individual that his credit report, obtained by the FBI during its investigation, indicated that they were \$12,000 in arrears on his mortgage payment. Confronted with this information, the individual admitted that they were not current with their mortgage payments, but were trying to work out a schedule of payments with their mortgage company while trying to sell the home. The individual stated that he was up to date on his truck payments.

The individual's financial condition did not improve subsequent to the PSI. The individual's truck was repossessed later in 2004 when he was unable to keep up with the payments. In addition, the individual and his wife were unable to sell their house and lost their home to the mortgage company in November 2004. At that time, the individual and his wife were forced to move in with their daughter for three months, until early 2005 when they began renting a home. The individual's wife is still not working but is enrolled full time in cosmetology school. The individual expects his wife to graduate from cosmetology school in December 2005.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed

to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Derogatory Information, Criterion L

In the Notification Letter, DOE Security asserts it suspended the individual's security clearance based upon its finding that he has "engaged in unusual conduct . . . which tends to show that [he] is not honest, reliable, or trustworthy, or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interest of the national security." 10 C.F.R. § 710.8(l) (Criterion L). DOE Security's concerns arise out of the individual's filing for bankruptcy in December 2003. Bankruptcy is a legal means for resolution of financial problems, and an individual may become free of debt by virtue of a bankruptcy. As we have noted in prior decisions, however, this does not mean that there are no DOE security concerns related to the bankruptcy or more particularly to the individual's financial behavior leading to the bankruptcy. *See Personnel Security*

Hearing, Case No. TSO-0026, 28 DOE ¶ 82,925 (2003); *Personnel Security Hearing*, Case No. VSO-0520, 28 DOE ¶ 82,862 (2002); *Personnel Security Hearing*, Case No. VSO-0288, 27 DOE ¶ 82,826 (1999); *Personnel Security Hearing*, Case No. VSO-0081, 25 DOE ¶ 82,805 (1996). At the hearing, the Personnel Security Specialist testified that a pattern of financial irresponsibility raises security concerns since it may indicate that an individual is not honest, reliable or trustworthy, could render an individual vulnerable to blackmail or coercion, and may tempt an individual to engage in illegal activities to pay off debt. Tr. at 23-24.^{2/} Specifically with regard to the individual, she expressed her view that “[e]ven though he filed a Chapter 7 bankruptcy, the information he provided during the interview and following the interview reflects that he is still being financially irresponsible, especially with the mortgage on his home.” Tr. at 24.

Having reviewed the circumstances of this case, I have concluded that DOE Security correctly invoked Criterion L on the grounds of financial irresponsibility. The individual’s financial calamities can be traced to March 2002 when his wife was terminated from her employment. However, I find that their bankruptcy was primarily the result of excessive credit card spending and, for reasons that have not been fully explained, they have not been able to regain financial stability despite discharging \$80,000 in credit card debt in March 2004. Accordingly, I turn to whether the individual has presented sufficient mitigating evidence to overcome the concerns of DOE Security.

B. Mitigating Circumstances

According to the individual, his wife was in charge of their finances and responsible for paying their bills during the period proceeding their financial collapse, and he was unaware that his wife had accumulated more than \$80,000 in credit card debt until early 2003. Tr. at 62-63; DOE Exh. 22 (PSI transcript) at 13. The individual testified they were forced to file for Chapter 7 bankruptcy in December 2003 when their voluminous credit card debts, caused by his wife’s secretive irresponsibility and excessive spending, were determined to be insurmountable. Tr. at 64-66, 98. However, the fact that the individual’s wife had the predominant role in their financial ruin does not absolve the individual from responsibility.^{3/} *See Personnel Security Hearing*, Case

^{2/} Under Guideline F of the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, security concerns are raised when an individual has demonstrated “a history of not meeting financial obligations” and an “inability or unwillingness to satisfy debts.” *See* 10 C.F.R. Part 710, Subpart A, Appendix B.

^{3/} On the basis of the PSI, the Personnel Security Specialist drew the impression that the individual had a more active role in the excessive credit card spending leading to their bankruptcy. The Notification Letter states that during the PSI, “[the individual] admitted he

(continued...)

No. VSO-0066, 28 DOE ¶ 82,956 (2004) (the individual displayed very poor judgment and unreliability in leaving financially irresponsible wife in control of their finances). A negative inference can be drawn with regard to the individual's reliability and trustworthiness to the extent he acquiesced to his wife's mismanagement of their finances after learning of her prior misconduct, and failed to take meaningful action to stabilize their financial condition. *Id.*

At the hearing, the individual testified that following the bankruptcy, his wife resisted turning over their finances to him, stating that there were "a lot of arguments between my wife and I." Tr. at 91; *see* Tr. at 98-99.^{4/} Following the bankruptcy discharge of debt in March 2004, the individual's truck was repossessed by the bank, and the individual and his wife lost their home to their mortgage company in November 2004. Tr. at 73, 78. The individual testified, however, that in January 2005, his wife relented and he assumed full control of their finances. Tr. at 99. The individual asserted "I pay the bills now. It's turned around completely now. . . . I am fully responsible for the bills." Tr. at 79-80. The individual stated that they no longer have any credit cards. Tr. at 80. At the hearing, the individual also presented his current budget showing their monthly income and expenses, and a projected surplus of \$323 each month. Ind. Exh. A. In this regard, the individual stated, "[s]ince I take care of the bills, I know exactly what I'm spending on it, so I wrote that up." Tr. at 86. The individual asserted that his wife no longer gambles. Tr. at 82. In addition, the individual presented evidence that their state taxes are now paid and current.^{5/}

3/ (...continued)

had purchased the big screen TV, stereos, and a boat because he thought they were making enough money" DOE Exh. 1; *see* Tr. at 20. The individual explained at the hearing, however, that he purchased the big screen TV and boat, in cash, during the 1999-2000 time frame, before his wife lost her job. Tr. at 78. He testified that he never owned a stereo and did not know where the Personnel Security Specialist received that information. *Id.* The individual further testified that he sold the TV and boat in 2003 when their finances began to unravel. Tr. at 63.

4/ I note that this testimony somewhat contradicts the individual statement during his PSI that "[m]y wife takes care of most of the bills but we have been doing it together now." DOE Exh. 22 at 8.

5/ The individual conceded that at the time of the PSI in May 2004, he and his wife owed approximately \$1000 in state taxes from their 2003 return. However, that arrearage was more than offset by the refund they received on their 2004 return filed in the spring of 2005. Tr. at 76-77; *see* Ind. Exh. D.

Notwithstanding, additional evidence presented at the hearing demonstrated that the individual and his wife have still not achieved a sustained period of financial responsibility. Under cross examination by the DOE Counsel, the individual could not explain why their February and March 2005 checking account statements, also submitted into evidence, list charges for bounced checks for insufficient funds ("NSF") on 13 separate occasions and overdraft fees on 16 different dates. *See* Ind. Exh. C. In this regard, the hearing transcript contains the following exchange:

- Q: Are those yours or your wife's charges or fees?
A: My wife's.
Q: So you have 13 bounced checks, correct?
A: Yes.
Q: Sixteen overdraft fees, correct?
A: That is correct.
Q: Would you say you're doing a good job of handling your finances?
A: No.
Q: And curtailing your wife's spending?
A: No.

Tr. at 108-09. The individual then recanted his previous testimony that he had taken over the finances in January 2005, stating that it was actually in April 2005 when he finally took the checkbook away from her. Tr. at 113. However, the individual later admitted that he still had not taken away their checking account debit card from his wife. Tr. at 117-18.

In prior cases involving financial irresponsibility, Hearing Officers have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *Personnel Security Hearing*, Case No. VSO-0520, 28 DOE ¶ 82,862 at 86,023 (2002), *citing Personnel Security Hearing*, Case No. VSO-0108, 26 DOE ¶ 82,764 at 85,699 (1996). It is clear that the individual has not met that standard in this case. I can accept that the individual was not in control of certain circumstances that precipitated their bankruptcy, i.e. his wife losing her job in March 2002 and her excessive credit card spending without his knowledge. However, the individual has been well aware of their financial predicament since early 2003, and they still have not achieved financial stability although they were able to discharge more than \$80,000 in credit card debt in March 2004. The individual cannot disassociate himself from his wife's financial irresponsibility where, as here, he has unreasonably delayed in taking appropriate action to rectify the situation. Consequently, the security concerns arising from the individual's own financial irresponsibility remain unabated.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has engaged in conduct that tends to show that he is not reliable and trustworthy. I further find that the individual has failed to mitigate the legitimate security concerns stemming from his conduct. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: August 4, 2005